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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 430

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as Owner of the Motorboat "LINSEED KING", her engines, etc., for Limitation of Liability, Civil and Maritime.

SPENCER KELLOGG & SONS, INC.,
Petitioner,

HILDA M. HICKS, as Administratrix, and others,
Claimants-Respondents.

BRIEF ON BEHALF OF CLAIMANTS, MILLICENT IFILL, DARNLEY BARKER AND KENNETH NORGROVE IN OPPOSITION TO THE PETITION OF SPENCER KELLOGG & SONS, INC. FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

SIDNEY NEWBORG and
SAMUEL B. SEIDEL,
Counsel for Claimants,
Ifill, Barker and Norgrove.

INDEX

Brief in Opposition to Petition for Writ of Certiorari.

PAGE

Statement 2

Facts 3

POINT I—The decision of the Circuit Court of Appeals denying limitation upon the evidence in this case was in all respects correct and in conformity with the authorities 6

POINT II—Limitation was also properly denied on the other grounds found by the District Court, to wit, overcrowding and inadequacy of crew, which findings were undisturbed by the Circuit Court of Appeals 15

In Conclusion 19

TABLE OF CASES CITED.

American Hawaiian S. S. Co. v. Pacific S. S. Co., 41 F. (2d) 718 (C. C. A. 9) 8

Bark Gentleman, The, Fed. Cas. 5324 19

Benjamin Noble, The, 232 Fed. 382 16

Butler v. Boston Steamship Company, 130 U. S. 527 7

City of Norwich, The, 118 U. S. 468 7

Craig v. Continental Ins. Co., 141 U. S. 638 8

Eastern S. S. Co. v. Great Lakes D. & D. Co., 256 Fed. 497 19

PAGE

Jeremiah Smith & Sons, Inc., In re, 193 Fed. 395 ... 12

Kitsap County Transp. Co. v. Harvey, 15 F. (2d) 166 8

La Bourgogne, 210 U. S. 95 ..... 7, 8

North Star, The, 106 U. S. 17 7
North Star, The, 3 F. (2d) 1010 9

Pacific Mail S. S. Co., In re, 130 Fed. 76, cert. dem. 195 U. S. 32 18
Parsons v. Empire Transportation Co., 111 Fed. 202 19

Quinlan v. Pew, 56 Fed. 111 9

Reichert Towing Line, In re, 251 Fed. 214, cert. dem. 248 U. S. 565 13
Richardson v. Harmon, 222 U. S. 96 7

Santa Rosa, The, 249 Fed. 160 13
Scotland, The, 105 U. S. 24 8
Standard Wholesale P. & Acid Works v. Chesapeake L. & T. Co., 16 F. (2d) 765 9

Tate v. Levy, 14 East 202 19
Texas & Gulf S. S. Co. v. Parker, 263 Fed. 864, cert. dem. 253 U. S. 488 ..... 9, 13

Virginia, The, 264 Fed. 877, cert. dem. 257 U. S. 659 9, 10

Warnken v. Moody, 22 F. (2d) 960 9

Authorities Cited.

Limitation of Liability Act of March 3, 1851, as Amended (R. S. 4283, U. S. C. A. Title 46, § 183) 5

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Petitioner,

HILDA M. HICKS, as Administratrix, and others,

Claimants-Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States.

The claimants-respondents, Millicent Ifill, as administratrix of the goods, chattels and credits of McBean H. Ifill, deceased, Darnley Barker and Kenneth Norgrove, respectfully show to the Court as follows:

Statement.

Spencer Kellogg & Sons, Inc., the petitioner for certiorari herein, brought a proceeding in the United States District Court for the Southern District of New York for limitation of its liability for damages arising out of the sinking of the motorboat "Linseed King" in the Hudson River near New York City on December 20th, 1926.

The limitation proceeding was opposed by death and personal injury claimants, and after a trial, limitation was denied (Opinion of Hazel, J., R. 122-141, Interlocutory Decree, R. 142-146). In addition, negligence was affirmatively found (R. 144).

The claims were referred to a commissioner for ascertainment of damages. On the commissioner's report final judgment was entered allowing recovery in the case of certain claimants and dismissing the claims of others (R. 240-261). Cross appeals were then taken to the Circuit Court of Appeals for the Second Circuit: (a) By Spencer Kellogg & Sons, Inc. as to the question of negligence and limitation of liability, and (b) by certain claimants who felt aggrieved by the dismissal of their claims. The Circuit Court of Appeals affirmed the judgment of the District Court in all respects.

This brief is submitted on behalf of Millicent Ifill, as administratrix, etc., who recovered judgment for the death of her intestate for $12,573.05 and on behalf of Darnley Barker and Kenneth Norgrove who recovered judgments for personal injuries for $1,020 and $520 respectively. These claimants ask that the petition for certiorari as to limitation of liability be denied in all respects as to them.

We take no position on the petition for certiorari (Oct. Term 1931, No. 444), made by certain claimants whose claims were dismissed as being within the sole jurisdic-

tion of the New Jersey Workmen's Compensation Board and who seek to have the jurisdictional question reviewed by this Court as a question of law. We likewise do not answer the so-called "second question presented", set forth in the petition herein, because none of our claimants fall within the category of "Saturday men" as defined in the petition, Ifill being a non-employee and Barker and Norgrove both maritime workers, concededly not covered by the New Jersey Compensation Act.

We maintain that, even if the Court grants certiorari for claimants whose claims were dismissed and grants certiorari to the petitioner as to the claims of the "Saturday men", the petition should still be denied as to claimants of the class of Ifill, Barker and Norgrove, as against whom no question save that of limitation is raised.

No question of law to be reviewed by this Court exists *as to petitioner's right to limitation of liability.*

Facts.

On December 20, 1926, Spencer Kellogg & Sons, Inc., the petitioner in the limitation proceeding, operated a linseed oil refinery at Edgewater on the west bank of the Hudson, approximately opposite West 95th Street, Manhattan. Many of petitioner's employees lived in Manhattan and were customarily ferried across the Hudson, morning and evening, on petitioner's motorboat "Linseed King." The regular voyage was between petitioner's plant and the 95th Street dock. One Rohweder operated the boat under the direction of Charles E. Stover, the General Manager of petitioner's Edgewater plant.

The "Linseed King" was of a gross tonnage of 10.75, net tonnage 7, length all over 45′, breadth 10.0′, and depth 4′ 6″. She contained a cabin 29½′ in length and a pilothouse 4′ long, separated from the cabin by a pipe

rail. There were seats for not more than thirty-eight men in the cabin. On her last voyage the "Linseed King" carried not less than seventy-eight passengers (R. 402) and there were eighty-three life preservers on board (R. 377).

On Sunday, December 19, 1926, a linseed ship carrying a large quantity of raw material docked at petitioner's plant at Edgewater. A number of temporary laborers were required to unload the ship. Stover caused an advertisement to be inserted in the New York World of December 19, 1926, for laborers, directing applicants to report at the West 95th Street dock at 6:30 A. M. on December 20, 1926 (R. 754-755; advertisement printed at R. 2343).

This need for temporary labor to unload the linseed ship is a fact of prime significance in this case. The linseed cargo had to be removed from the ship with utmost speed and it therefore seemed imperative to petitioner that the "Linseed King" be operated on December 20, 1926, regardless of her fitness to carry seventy-eight or more passengers and regardless of the weather and ice conditions prevailing on that day.

In response to the advertisement in the World a number of men appeared on the 95th Street dock. A large crowd, regular employees and applicants for temporary jobs, pushed its way on the boat. The exact number who got aboard will never be known, but the evidence clearly shows that the launch was permitted to become perilously overcrowded.

The "Linseed King" left the 95th Street dock before dawn and while it was still dark (Petition, 12; Meteorological Report, Claimant's Exhibit E, R. 2342), but never reached Edgewater. As she was in midstream a crash was heard, water poured in and in two minutes' time the launch was under water (R. 371). Twenty-nine men survived, twenty-seven bodies were found in the cabin,

eight in the river, and twenty-three were never recovered (R. 372). When the vessel was taken ashore, after having been carried upstream to Riverdale by the incoming tide, her port bow was found to have been stove in. The opening was 19" long, 8¾" wide. This opening was made, as both District Court and Circuit Court found, by the impact of the boat against a body of floating ice (R. 371).

After a trial lasting nearly three weeks, during which nearly a hundred and nineteen witnesses were heard and some two thousand pages of testimony taken, the District Court denied limitation of liability upon all of the following grounds:

(a) That the "Linseed King" was unfit for service in an ice blocked stream.

(b) That on the day of the disaster she carried too great a load.

(c) That she was not manned by an adequate crew.

(d) That the petitioner by Stover, its general manager, was in privity with and had knowledge of the fact that the "Linseed King" was being operated under the foregoing conditions.

The District Court's finding is not only amply justified, but a contrary finding would be unthinkable. Petitioner's managers and agents were culpably negligent and ignorant. Congress never intended the limitation statute (R. S., Section 4283, 46 U. S. C. A. § 183), to authorize operation of vessels in complete disregard of common rules of prudence.

The affirmance by the Circuit Court must be construed as a confirmation of the District Court's findings of fact. Although Judge Hand in his opinion adverts

chiefly to the shipowner's privity with the culpable operation of the "Linseed King" through icy waters, it is submitted that approval of the other grounds found by the District Court for denial of limitation, to wit., overcrowding and an inadequate crew, is implicit in the judgment of the Circuit Court of Appeals.

POINT I.

The decision of the Circuit Court of Appeals denying limitation upon the evidence in this case was in all respects correct and in conformity with the authorities.

The first question, as framed in the petitioner's brief, has a spurious cogency. The evidence does not show that the shipowner did all that the law reasonably requires taking into consideration all the circumstances.

Petitioner's main office was at Buffalo, New York. It had a plant at Edgewater, N. J. Stover was admittedly in complete charge of this plant, including the "Linseed King" (Matthews, R. 5743 and 5744; Kellogg, R. 5747). It was Stover (for whose acts petitioner is concededly liable) and not Rohweder, the launch captain who determined when the "Linseed King" should run (R. 352).

The customary trip of the "Linseed King" was across the Hudson River a distance of less than one and a half miles. The boat was literally never out of Stover's sight. Even if Rohweder had general instructions not to run the boat in ice, petitioner is still liable because its orders were tacitly overruled by Stover, when, with his knowledge and consent, the boat was being run twice and sometimes four times daily during the dangerous season of the year. The culpability of Stover for the catastrophe of December 20, 1926, is even clearer when we consider that the District Court and the Circuit

Court of Appeals found that ice in serious quantities had appeared in the Hudson River on December 18 and December 19, 1926. On at least on one of these days Stover was present at petitioner's plant at the edge of the river. Furthermore on Sunday, December 19, 1926, Stover had inserted an advertisement in the New York World for laborers to meet the "Linseed King" on December 20, 1926 (R. 754-755). Under these circumstances the District Court and the Circuit Court found *as a fact* that Stover, and through him petitioner, tacitly or actively approved of the operation of the "Linseed King" across the Hudson River in the ice season. This conclusion of fact is amply supported by the evidence. This Court is certainly not interested in reviewing such questions of fact on certiorari.

The so-called question of law as framed by the petitioner begs the question and assumes a state of facts which the lower courts have found not to exist.

The authorities in this Court and in the lower Federal courts, cited by petitioner, in support of its application for certiorari on the first question, are readily distinguishable as to rules of law and, in the cases of the District Court and Circuit Court opinions, are largely upon questions of fact peculiar to each particular case.

La Bourgogne, 210 U. S. 95, was the case of an ocean liner negligently navigated through a fog on the high seas. The distinction between ocean voyages and ferry voyages has been recognized by the courts of the United States as we shall hereafter point out. Furthermore petitioner's liability in the case at bar is based not upon the negligent navigation of a seaworthy vessel but upon petitioner's culpable operation of a vessel totally unseaworthy for the uses to which petitioner put it.

The other cases in this Court (*Butler* v. *Boston S. S. Co.*, 130 U. S. 527; *Richardson* v. *Harmon,* 222 U. S. 96; *The City of Norwich,* 118 U. S. 468; *The North Star,* 106

U. S. 17; *The Scotland,* 105 U. S. 24), cited by petitioner contain certain general statements as to the meaning and effect of the Act of 1851 but have nothing whatever to do with this case and need not even be discussed.

Craig v. *Continental Ins. Co.,* 141 U. S. 638 is easily distinguished in that the disaster in that case was caused by one Reardon who was an employee of a third party and not the shipowner's employee at all. This Court said at page 646:

> "Where the owner is a corporation, the privity or knowledge must be that of the managing officers of the corporation."

Stover was the manager of the shipowner's plant at Edgewater, N. J., a position of trust, discretion and executive power. Petitioner does not dispute that it is bound by Stover's acts.

American Hawaiian S. S. Co. v. *Pacific S. S. Co.,* 41 F. (2d) 718 (C. C. A. 9), was a case very similar to *La Bourgogne,* where the ship was operated at an excessive speed through a fog, carrying an insufficient watch. Again common sense points out the vast difference between an ocean voyage where navigation must necessarily be left to the discretion of a competent sea captain who should be master of his craft and a voyage across the Hudson River where the captain is little better than a mechanic working in petitioner's factory and where every detail of the operation of the launch is ordered by the factory manager.

Kitsap County Transp. Co. v. *Harvey,* 15 F. (2d) 166 (C. C. A. 9), involved a question of the construction of a rather large vessel, a ferry boat, and the ferry company was held to have done its duty when it employed competent shipbuilders to build the boat. We feel the case is doubtful authority in view of the holding of the

Circuit Court of Appeals in the *Virginia*, 264 Fed. 877, in which this Court denied certiorari, 257 U. S. 659, hereafter discussed.

Warken v. *Moody*, 22 F. (2d) 960 (C. C. A. 5), was a case where the disaster was caused by the negligence of the launch captain in performing a *technical* operation, namely, the repair of the motor of the launch which, for some unexplained reason, ceased to function during a voyage.

Standard Wholesale P. & Acid Works v. *Chesapeake L. & T. Co.*, 16 F. (2d) 765 (C. C. A. 4), was a finding of freedom from negligence rather than freedom from privity. It is respectfully submitted that in that case the Court confused the issues of negligence and privity and the opinion is probably of little value.

Quinlan v. *Pew*, 56 Fed. 111 (C. C. A. 1), is an early case and again relates to a defect in a technical feature of the boat's construction. It is questionable whether this case would in any event still be considered good law in view of the much stricter standards of care imposed by the later cases upon ships carrying passengers.

The North Star, 3 F. (2d) 1010 (D. C. Mass.), was a clear case of a vessel running aground through negligent navigation. No privity of the shipowners could be shown in respect to the captain's careless direction of the ship through a fog.

There are numerous authorities holding that on short voyages comparable to that of the "Linseed King", privity will be found where the vessel is permitted to operate under dangerous weather conditions.

Texas & Gulf S. S. Co. v. *Parker*, 263 Fed. 864 (C. C. A. 5) (certiorari denied 253 U. S. 488).

In that case the vessel "Pilot Boy" sailed from Galveston for Corpus Christi, a coastwise voyage along the

Gulf of Mexico ordinarily requiring thirty-six hours. The vessel was overtaken by a hurricane and foundered. The evidence showed that on the ship's sailing date the U. S. Weather Bureau at Galveston had given warning of a hurricane entering the Gulf of Mexico, the direction of which had not yet been ascertained. Limitation was denied, the Court holding that the owner was bound to hold his ship in port until it could be reasonably sure that she would not run into the hurricane. The court said, at page 867:

> "We think the master either had information that the hurricane was entering the gulf at 10 A. M., or earlier, on the 17th, that its course was not known, that it was dangerous for vessels to approach its course, and that it would reach the Texas Coast somewhere in the forenoon of the 18th, and that the 'Pilot Boy' could not expect to reach the bar at Corpus Christi earlier than 11 A. M. of the 18th, or that information of that character was available in Galveston before the departure of the 'Pilot Boy' upon proper inquiry which the master failed to make. In either case the master was negligent in the attempt to outrun a hurricane with a small vessel, not adapted to weather it, if encountered, and when the chances of encountering it, based upon the available information, were preponderating."

This distinction between long and short voyages is well established.

> *The Virginia* (*Hines* v. *Butler*), (D. C.) 264 Fed. 986, affirmed (C. C. A. 4) 278 Fed. 877, certiorari denied, 257 U. S. 659.

"The Virginia" was a vessel plying regularly between Baltimore and Norfolk, an overnight voyage down Chesa-

peake Bay. The ship was destroyed by fire en route from Baltimore to Norfolk. The court found that due to the master's negligence the fire fighting apparatus was not in condition to meet the emergency. The shipowners were held liable for personal injury claims *without limitation.* Privity was brought home to the owner only because the boat was used exclusively for *short voyages,* and therefore under the owner's daily supervision. The Circuit Court of Appeals said, at page 880:

> "In the present case, the 'Virginia' was operated as one of a line which may be termed as analogous to a ferry line. It plied between Baltimore and Norfolk on regular trips, apparently, from the testimony, leaving Baltimore one night for Norfolk, and leaving Norfolk the next night to return to Baltimore. It was not the case of a sailing vessel or ocean steamship, which leaves for a voyage of more or less duration, and as to which the owner cannot do more than see, at the time it leaves the wharf for its voyage, that it is staunch, seaworthy, and properly equipped. In the case of the 'Virginia', as in the case of any other ferryboat over waters of some length, the vessel was at a known point. It was in port every day, being absent only at night. If Baltimore was the home port, it was in Baltimore every other day; but, as Norfolk was equally a port in which refitting or inspection can be done, it was practically in a place where it could be daily under the inspection of the owner."

The "Linseed King" was operated on December 20, 1926, under even less favorable conditions. Without reviewing all the testimony regarding the presence of ice blocks in the Hudson on and before December 20, 1926, and accepting the inferences most favorable to

petitioner, it is conclusively established that floating ice had been observed at midnight, December 18, 1926, by the barge dispatcher of the New York Central Railroad, stationed at the foot of West 65th Street, Manhattan (R. 1714, 1722). His observations were made thirty hours before the last voyage of the "Linseed King" and his notation in his records that there was ice in the river indicates that *the ice was sufficient in quantity to interfere with the navigation of the heavy c[illegible] floats under his care.* Practically all of petitioner's employees who had crossed on the "Linseed King" on December 19, 1926, saw ice in the river on that day. These danger signals should have warned Stover, the man responsible for the "Linseed King", that navigation of the boat on December 20, 1926, involved an unjustifiable risk. Unfortunately, Stover was more interested in hiring extra laborers than in safeguarding their lives.

Stover was admittedly in complete charge of petitioner's Edgewater plant, including the "Linseed King" (Matthews, R. 5743-4; Kellogg, R. 5747). His negligence caused the disaster and the petitioner is liable for such negligence *without limitation.*

In re Jeremiah Smith & Sons, Inc. (C. C. A. 2), 193 Fed. 395.

In that case the vessel "Jennie Smith" was destroyed by an explosion at Fall River, Massachusetts. The explosion occurred because fumes from the gasoline tank came in contact with a red hot stove. A standpipe was provided, which, had it been used, would have prevented the explosion. The testimony showed that one Homan was the Company's manager at Fall River. The District Court on these facts allowed limitation. The Circuit Court of Appeals reversed the decision of the District Court, saying at page 197:

"The standpipe was aboard at the time in a locker, but the evidence is that it was not the practice to use it. Charles W. Homan who lighted the stove on this occasion and who superintended the filling of the tank, did so with the funnel without using the standpipe. He managed the business of the line at the Fall River end, employed and paid the crews, told the captains when and where to go, ordered and paid for the supplies, and attended to the repairs. He was not called as a witness. If there was any other person to manage for the corporation, the petitioner did not produce him. In the cases of corporations, knowledge or privity of managing officers or agents is the knowledge and privity of the corporation (citing cases).

Homan knew or ought to have known the careless practice that prevailed in not using the standpipe, and was guilty of this very practice on this occasion. His knowledge and privity was that of the petitioner."

The petitioner must show not only that the boat is seaworthy but that it had no privity with the causes of disaster.

In *The Santa Rosa*, 249 Fed. 160 the court said, at page 162:

"In these proceedings the burden of proof is upon the petitioner to show that the loss occurred without its privity or knowledge."

See also:

In re Reickert Towing Line, 251 Fed. 214 (Cert. den. 248 U. S. 565).

In *Texas & Gulf S. S. Co.* v. *Parker*, supra, the court, with reference to the privity of the manager, said:

"The evidence tended to show that he was in Galveston the day the 'Pilot Boy' departed. He said he was present when the master telephoned the Weather Bureau. The evidence also tended to show that he told the master that the boat was loaded and to go ahead. Conceding that Guyton gave no order to the master to sail, and that the master had the responsibility of deciding, still the evidence tended to show that Guyton knew of the master's decision before the departure of the Pilot Boy, and, if it was a negligent one, knew of the master's negligence. Guyton's knowledge was that of his principal, the appellant, and established privity on the part of the owners, with the negligence of the master and prevents them limiting their liability for the loss."

There can be no question that petitioner is bound by Stover's negligence, and upon the findings of the District Court undisturbed by the Circuit Court, limitation has been properly denied.

In all limitation cases privity and seaworthiness are largely questions of fact. If these questions are, upon proper evidence, determined against the shipowner by the District Court and the Circuit Court of Appeals, it is submitted that this Court should not grant a review by certiorari.

POINT II.

Limitation was also properly denied on the other grounds found by the District Court, to wit, overcrowding and inadequacy of crew, which findings were undisturbed by the Circuit Court of Appeals.

A

The "Linseed King" was unseaworthy in that with the knowledge and privity of her owner she was customarily overloaded greatly beyond her capacity. The District Court found that seventy-eight men were carried on her last voyage and the Circuit Court of Appeals approved this finding. Petitioner sought to convince the District Court by expert testimony that the vessel could safely carry such a number. The District Court wisely rejected this proof (R. 407), saying:

> "However I disregard the expert testimony on this point and give credence to the unimpeached evidence of many survivors. They substantially testified that the men in the cabin were crowded or jammed so closely together that there was interference with their movements. Such testimony is entitled to greater weight than testimony based on computation or calculation of area of available space, especially when it is corroborated by other facts and circumstances, namely, by evidence that men were standing on the steps of the pilot-house near the front passageway and close around the engine."

What load a vessel can safely carry is a question of fact which must be determined by the trier of the fact. The District Court and the Circuit Court of Appeals find that the "Linseed King" was overcrowded. This

alone has been held by this Court to be an element of unseaworthiness sufficient for the denial of limitation.

> *The Benjamin Noble* (D. C. E. D. Mich.), 232 Fed. 382, affirmed (C. C. A. 6), 244 Fed. 95, affirmed 249 U. S. 334.

In that case a Great Lakes steamer foundered on her voyage because she was overloaded with steel rails. The limitation was denied. The District Court said, at page 389:

> "Seaworthiness should include the question whether the vessel was overloaded."

The Circuit Court of Appeals said, at page 97:

> "The accepted definition of seaworthiness is whether the vessel is 'reasonably fit to carry the cargo which she has undertaken to transport.' ('The Southwark', 191 U. S. 1, 9, 24 Sup. Ct. 1, 48 L. Ed. 65); and this test is of course one of fact, not of law. *Seaworthiness is a relative term.* ('The Thames', 61 Fed. 1014, 1022, 10 C. C. A. 214 [C. C. A. 4]); and usually involves an inquiry into the condition or capacity of the vessel, in connection with the nature or tonnage of the cargo; as, for instance, it has been held that the condition of a vessel made it unseaworthy for carrying meat ('The Southwark', supra); likewise as to the carriage of flour ('The Thames', supra); as to the carriage of grain ('The Fitzgerald', 212 Fed. 678, 683, 129 C. C. A. 214 [C. C. A. 6]); and as to the carriage of asphalt (Dene Shipping Co. v. Tweedie Trading Co., 143 Fed. 854, 856, 74 C. C. A. 606 [C. C. A. 2]). This is true also of a vessel which is improperly ballasted with reference to the load it carried ('The Whitlieburn' D. C. 89 Fed. 526, 528, and Sumner v. Caswell D. C. 20 Fed.

249, 252, 253, decisions by Judge Addison Brown); so as respects an improper distribution or leading of the cargo ('The Oneida', 128 Fed. 687, 689, 63 C. C. A. 239 [C. C. A. 2]; 'The G. B. Boren', D. C. 132 Fed. 887, 888; 'The William Power', D. C. 131 Fed. 136, 137); or overloading a particular part of a vessel ('The Kate', D. C. 91 Fed. 679, 680, per Judge Addison Brown). It must follow if it is not obvious that the capacity of a vessel and the tonnage of its cargo are likewise vitally related as respects the fact of unseaworthiness."

The overloading of the "Linseed King" on December 20, 1926, must have been anticipated. Although Rohweder was not responsible for it, Stover was. It was undisputed that the boat ordinarily carried a number of laborers, usually a fairly large number on the early morning trip, starting from West 95th Street at about 6:30 A. M. Stover had advertised in the New York World for extra labor to unload the linseed ship. He had hired some extra laborers on Saturday, December 18, 1926, and a few on Sunday, December 19, 1926, to report for work the following Monday morning. He also expected a new group of applicants to appear at the dock on Monday morning, to be transported to Edgewater, to make their application for employment there. Stover was at the plant on Sunday, December 19, 1926, the day on which the New York Central barge dispatcher had seen ice floating at 65th Street. The blame for the overloading of the vessel clearly rests on Stover, and his knowledge and privity is that of the petitioner.

B.

The District Court properly found that the "Linseed King" was insufficiently manned on its last voyage (R.

412-414). The fact that the boat had been licensed to carry a crew of one is of no significance because the licensing authorities did not contemplate that this motorboat would be used to ferry a great number of workingmen. The finding of the District Judge on this point is clearly sustained by the evidence.

The insufficiency of the crew of the "Linseed King" is itself a sufficient ground for denying limitation.

In re Pacific Mail S. S. Co. (C. C. A. 9), 130 Fed. 76, certiorari denied (195 U. S. 32).

In that case the petitioner sought to limit liability for the foundering of a vessel in San Francisco Harbor. The evidence showed that the crew was sufficient in number but spoke only Chinese, and could not understand orders given in English. As a result, the lifeboats could not be launched in time to take all of the passengers. The court held that this rendered the boat unseaworthy. The crew must be competent not only for ordinary navigation but for any emergency which may reasonably be anticipated. The court said, at page 82:

> "It is, as was said by Judge Hawley in Re: Meyer (D. C. 74 Fed. 885), 'the duty of the owners of a steamer carrying goods and passengers, not only to provide a seaworthy vessel, but they must also provide the vessel with a crew adequate in number, and competent for their duty with reference to all the exigencies of the intended route', not merely competent for the ordinary duties of an uneventful voyage, but for any exigency that is likely to happen, for example, as unfortunately did happen in the present case,—the striking of the ship on a reef of rocks—and the consequent imperative necessity for instant action to save the lives of passengers and

crew. The duty rested upon the petitioner to be prepared for such an emergency, not only by reason of the statute cited, but by the general maritime law."

See also:

Parsons v. *Empire Transportation Co.* (C. C. A. 9), 111 Fed. 202;
The Bark Gentleman, Fed. Cas. 5324;
Tate v. *Levy,* 14 East 202;
Eastern S. S. Corp. v. *Great Lakes D. & D. Co.,* 256 Fed. 497.

POINT III.

In Conclusion.

The unseaworthiness of the "Linseed King" and the privity of the owner were amply proved as matters of fact and this Court should deny certiorari insofar as the right of petitioner to limit its liability is concerned.

These claimants take no position with reference to the application of the claimants whose claims were dismissed or with reference to this petition insofar as the "Saturday men" are concerned.

Respectfully submitted,

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